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CONSTITUTION OF THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

SEPTEMBER 13 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 97-19]

The Committee on Foreign Relations, to which was referred the Constitution of the United Nations Industrial Development Organization (UNIDO), which was signed for the United States at New York, on January 17, 1980, having considered the same, reports favorably thereon with understandings and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

This Constitution would establish UNIDO as a specialized agency within the United Nations system.

BACKGROUND

UNIDO was set up in 1966 as an autonomous organization within the United Nations. Its basic objective is to promote and facilitate industrialization in the developing countries. UNIDO obtains its administrative funding from the U.N. central budget. This budget amounts to $36.5 million in calendar year 1982. In addition, UNIDO conducts a large variety of industrial technical assistance programs primarily with United Nations Development Program (UNDP) funds. The budget for this activity in 1982 comes to $105.0 million. The U.S. share of the central budget is equal to the share of the overall U.N. budget, or 25 percent. While the United States accounts for about 18 percent of UNDP's budget, its share of UNIDO's technical assistance program is a bit smaller, as UNIDO obtains funds from several trust funds and bilateral donations which do not involve any U.S. contributions.

In 1975, the United Nations endorsed a recommendation that UNIDO become a specialized agency with its own constitution and

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budget. Negotiations began in 1976 and were concluded on April 8, 1979, when a Constitution was adopted by consensus at a U.N. Conference on the Establishment of UNIDO as a Specialized Agency. The United States signed the Constitution on January 17, 1980. The President formally transmitted the Constitution to the Senate for its advice and consent on October 5, 1981.

To date 124 countries have signed the Constitution and 80 have ratified. When 80 countries have ratified, special consultations can be held to formally decide that UNIDO will become independent. Although the necessary number of countries have now ratified the Constitution, it is unlikely that such consultations will be held until the U.S. ratifies the treaty. Several Western industrial countries, including Germany, the United Kingdom and Canada have withheld ratification awaiting U.S. action. On the other hand, Japan and France have already ratified. Most East bloc countries, including the Soviet Union, are also withholding ratification, evidently awaiting U.S. action.

UNIDO's record on delivering reasonably professional technical services seems at a par with other U.N. agencies. Activities range from sending many short term consultants for a few weeks to deal with highly technical problems, to sponsoring workshops and training programs for technicians and managers, to long term contracts to establish a factory or training or research facility. Use of U.S. consultants is quite common.

On the other hand, UNIDO's record is hosting large international conferences which endorse concepts contained in the New International Economic Order has been at odds with longstanding U.S. policy. At the second quadrennial conference (UNIDO II) in Lima, Peru, in 1975, a Lima Declaration and Plan of Action for Industrial Development and Co-operation was adopted over the objections of the United States. Four years later, UNIDO III endorsed a New Delhi Declaration and Plan of Action, again over U.S. objections. The thrust of these political documents is that industrial country governments should work toward a goal of ensuring that 25 percent of the world's industrial plant is located in the developing world by the year 2000 (the current percentage is about 11 percent). The documents imply that not only should developed countries provide aid to help meet these goals, but also adopt trade and internal industrial policies which insure that the goal will be reached, even if it means shutting down their own industries which are identified as being more suitably located in the Third World.

The United States has often been frustrated by its inability to exert much control over budgets or personnel policies in U.N. agencies, even though it contributes 25 percent of the central budget. U.S. current policy is to press for zero growth (in real terms) budgets. UNIDO's recent budget record is quite good with its 1982 budget—about the same in real terms as its 1981 budget. Its personnel record is more troublesome. According to general U.N. formulas, the United States should have around 15 percent of UNIDO's professional staff; it currently only has around 11 percent. Only three of the 27 director level or above slots are filled by Americans, and none of the eight senior positions is from the United States.

The United States difficulties with UNIDO are to some degree related to UNIDO's current status as a part of the U.N. The organization operates on a principle of one country, one vote, so that on political and budget issues the United States and other Western countries can easily be outvoted (on budget issues, it should be noted, the Soviets and other East bloc countries tend to be as conservative as the United States, and also outvoted). The United States cannot limit its contribution to UNIDO without getting out of the U.N. as a whole. Personnel policies are also to some degree dictated from New York, so that UNIDO can claim that it is unfair to look at the U.S. share of UNIDO jobs, but rather one must look at the U.S. share of all U.N. jobs.

These institutional problems provide the most logical argument for making UNIDO a specialized agency. On political issues, the United States could at least threaten the ultimate weapon—getting out of UNIDO and taking with it 25 percent of UNIDO's central budget. On the budget, the new Constitution contains a complicated voting formula (Article 14) which essentially would let the Western donor countries plus one other country block approval of any budget. This is a breakthrough in the U.N. system. The United States would likely find allies among the Eastern bloc countries, and perhaps even some of the developing countries which have relatively large assessments. With respect to personnel, UNIDO could no longer blame its low American representation on policies dictated by the U.N. in New York. The Constitution also states that 6 percent of the assessed budget will be spent on technical assistance (about the current level), which in effect imposes a ceiling. The United States has strongly opposed the tendency for other U.N. agencies to expand technical assistance programs funded from assessed funds.

The Constitution does contain one considerable irritant to U.S. sensibilities. The preamble includes the phrase, "Bearing in mind the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order, in the UNIDO Second General Conference's Lima Declaration and Plan of Action for Industrial Development and Co-operation . . ." The first article of the operative part of the Constitution begins by stating that "The primary objective of the Organization shall be the promotion and acceleration of industrial development in the developing countries with a view to assisting in the establishment of a new international economic order."

Those familiar with U.N. lexicon will note that the premable only "bears in mind" the New International Economic Order, and that Article I refers to a new international economic in lower case letters. The United States can therefore claim, as it did during negotiations, that Article I does not refer to any specific economic order, and that as the world economic system is constantly evolving, by definition there will be a new international economic order in the future that is different than the present. Nonetheless, the Committee decided to include an understanding with the treaty which makes clear that the United States is by no means obligated to support any of the specific recommendations contained in the Sixth Special Session documents or the Lima Declaration.

MAJOR PROVISIONS

The Constitution consists of a preamble, twenty-nine articles (in six chapters) and three annexes. The preamble contains no operational language. It recalls a variety of U.N. resolutions, notes the importance of industrialization in the development process, and states that all countries should cooperate to promote industrialization.

In Chapter I, the first article states that the "primary objective" of UNIDO shall be the "promotion and acceleration of industrial development in the developing countries with a view to assisting in the establishment of a new international economic order." As noted, the use of lower case letters and the article "a" instead of "the" was meant to delink this article from an endorsement of the specific "New International Economic Order" outlined in various UN resolutions and the Chapter of Economic Rights and Duties of States. Nonetheless, the understanding recommended by the Committee further clarifies that this article in no way altered previous U.S. positions on NIEO type resolutions.

The second article outlines a variety of activities for UNIDO, including: coordinating United Nations industrial development activities; providing technical assistance for industrialization, including training and pilot facilities; managing an industrial information clearinghouse; advising and assisting developing countries in formulating and executing development plans; assisting in the establishment and operation of industries, and as requested by the countries concerned, providing a forum for contacts and negotiations.

Chapter II provides for participation in UNIDO. Membership is open to all States which are members of the United Nations or a specialized agency. Article 6 provides for withdrawal from membership, not possible now without withdrawing from the United Nations. Dues would have to be paid for one year following withdrawal.

Chapter III establishes the organs of UNIDO. Article 8 specifies a General Conference composed of all members which will act upon the reports of the Board and the Director-General and determine the guiding principles and policies of the organization. Article 9 provides for the Board to be composed of 53 members elected by the Conference, with the following distribution of seats: 33 members elected from the Group of 77 (the G–77 or UN caucus of developing countries), 15 members elected from Group B (industrialized countries) and five members eelcted from Group D (the Soviet bloc). Article 10 establishes a Programme and Budget Committee to consist of 27 members elected by the Conference with the following distribution: 15 from the G–77, nine from Group B, and three from Group D.

Chapter IV delineates the process for approval of the program of work and the regular budget (i.e., the budget expenditures to be met from assessed contributions) and the operational budget (i.e., budget expenditures to be met from voluntary contributions). Article 14 stipulates that the Director-General shall prepare and submit a draft work program, regular budget and operational budget to the Board through the Programme and Budget Committee. The Committee will consider the Director-General's proposals and make recommendations to the Board by a two-third majority vote of those present and voting. The Board will examine the Director General's proposals and the

recommendation of the Committee and adopt the program of work, regular budget and operational budget, for submission to the Conference, by a two-thirds majority of those present and voting. The Conference will approve the submission of the Board by a two-thirds majority vote of those present and voting. The Conference may make no decision or amendment involving expenditures unless the Committee and the Board have had an opportunity to act as indicated above. By commanding more than a third of the votes in the Board and the Committee, the major donor States (i.e., Groups B and D), which share a common desire to keep United Nations agency budgets to a reasonable level, will be able to block work programs and budgets of which they disapprove, if they act together.

Article 15 provides that the scale of assessments for members shall be established by the Conference by a two-thirds majority of the members present and voting, upon a recommendation of the Board adopted by a two-thirds majority of the members present and voting. The Board's recommendation is to be based on a draft prepared by the Committee. The Constitution thereby provides a mechanism for the major donors as a group to veto a scale of assessments which they disapprove. Article 15 also stipulates that the scale of assessments shall be based to the extent possible on the scale most recently employed by the United Nations and no member shall be assessed more than 25 percent of the regular budget.

Chapter VI covers legal matters. Article 24 provides for amendments, with special, stringent provisions for amendments to financial articles. Financial amendments must be approved by two-thirds majorities of the Board and Conference respectively and must be ratified by three-fourths of the Member States. This provision protects the blocking third of the votes which major donors command in the Committee and Board.

Article 25 stipulates that the Constitution shall enter into force when at least eighty States that deposited instruments of ratification notify the Secretary General of the United Nations that they have agreed, after consultations among themselves, that the Constitution shall enter into force. However, for States that had deposited instruments of ratification but did not participate in such notification the Constitution shall come into force on such later date as they choose. The practical effect of the entry into force provisions is that the Constitution will not enter into force without the agreement and participation of major donors, including the United States.

Article 27 states that no reservations may be made to the Constitution.

ENERGY INTO FORCE

The Constitution provides that after 80 countries have ratified the Constitution, they may hold consultations and notify the Secretary General of the United Nations of their decision to bring the Constitution into force. As eighty states have already ratified the Constitution, that process could legally take place at any time. It is doubtful, however, that such consultations will occur until the United States has ratified. It is therefore likely that in practical terms the Constitution will enter into force a few months after formal ratification by the United States.

COMMITTEE ACTION

The Committee held hearings on June 29, 1982, and received testimony from the Honorable Gregory J. Newell, Assistant Secretary of State for International Organization Affairs. On August 10, 1982, the Committee considered the Constitution, and by a voice vote, ordered that it be reported favorably to the Senate with an understanding for advice and consent to ratification.

COST ESTIMATE

The Congressional Budget Office has provided the Committee with the following information on the budgetary impact of this treaty:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 7, 1982.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the treaty document and resolution of ratification of the Constitution of the United Nations Industrial Development Organization as ordered reported with understandings by the Senate Foreign Relations Committee on August 10, 1982.

Upon entering into force, the Treaty would create the United Nations Industrial Development Organization (UNIDO) as a separate United Nations affiliated agency. The United States currently contributes to UNIDO's regular budget through the assessed contributions to the United Nations in the State Department appropriation and to the operational budget through voluntary contributions in the Foreign Assistance appropriation. The scale of assessments for the regular budget is to be based on the scale used for the United Nation's budget. Article 15 of the Treaty limits any member's assessment to no more than 25 percent of the total—the United States' share of the United Nations' assessed budget. Therefore, it is expected that no significant additional cost to the United States government will be incurred as a result of ratifying the Treaty.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

TEXT OF RESOLUTION OF RATIFICATION

Resolved (*two-thirds of the Senators present concurring therein*), That the Senate advise and consent to the ratification of the Constitution of the United Nations Industrial Development Organization (UNIDO) and the annexes relating thereto (hereafter in this resolution referred to as the "constitution"), adopted by the United Nations Conference on the Establishment of the United Nations Industrial Development Organization as a Specialized Agency on April 8, 1979, and signed on behalf of the United States of America on January 17, 1980, subject to understandings, as follows:

(1) As used in Article 1 of the Constitution, the phrase "new international economic order"—

(A) is an evolving concept with no fixed meaning;

(B) reflects the continuing goal of members of the United Nations to find new or more effective ways of handling international economic relations and is subject to interpretation by all such members; and

(C) is not legally defined by the Constitution or by any resolution of the sixth or seventh special session of the General Assembly of the United Nations or by the Lima Declaration and Plan of Action of the United Nations Industrial Development Organization.

(2) The entry into force of the Constitution with respect to the United States of America does not abrogate or rescind any reservation made by the United States of America to any resolution, declaration, or plan of action referred to in the Constitution.

Appendix A

UNIDO Constitution

Statement of Gregory J. Newell, Assistant Secretary, Before the Senate Foreign Relations Committee

Mr. Chairman: I appreciate the opportunity to appear before you to discuss the ratification of the Constitution of the United Nations Industrial Development Organization. As you may recall from the statement I presented at the time of my confirmation hearings, I intend to improve U.S. influence in U.N. agency policy and management. I think ratification of the UNIDO Constitution will serve those goals.

We have not always agreed with all the positions or programs adopted by UNIDO. We regret the tendency of the organization to take certain political and economic positions which are not in line with ours. But rather than attempting to judge the organization, I would like to undertake the challenge of U.S. participation in UNIDO constructively; specifically, how we can work through UNIDO to promote our values, views, and interests.

One area of common concern is technical assistance. UNIDO serves as the executing agency for technical assistance funds, primarily from the U.N. development program, which total twice its regular budget. The vast majority of UNIDO technical assistance projects are consistent with U.S. development objectives. There are numerous "success stories" from UNIDO's work in the field.

To give just one tangible example, UNIDO is involved in a continuing project developing building materials in Indonesia. New techniques for upgrading masonry and reducing construction costs are providing housing for many of Indonesia's 4½ million homeless.

It is obvious how such a project is consistent with U.S. objectives:

By providing for a basic need—housing—we lessen the likelihood of debilitating social instability and enhance the cause of peace.

The technology appropriate to the need in the developing countries—concrete blocks in this example—is not supplanting a major U.S. export.

The project is conducive to self-sustaining economic growth and social development, teaching skills transferable to private sector entrepreneurs.

Another UNIDO program—the Network of Investment Promotion Offices—is designed to bring private sector investment capital in the developed countries together with opportunities in developing countries. This is a chance to expand the indigenous private sector in developing countries, as well as an opportunity to involve the American private sector in the development process. It is not just an ideological

tenet of the United States, but a proven fact, that the bulk of transfer of technology takes place as a result of actions of the private sector. Our emphasis on the private sector stems from the strongly held conviction that unleashing the individual initiative and creativity of the people of the Third World is critical to economic growth and development.

Putting aside the programs of the organization, the strongest arguments for ratification of this Constitution are in terms of management. The President's transmittal letter has clearly spelled these out in some detail. But let me briefly summarize here. Under the present arrangement, program decisions are made by UNIDO's governing body, the Industrial Development Board, meeting annually in Vienna. Budget decisions are made by the U.N. General Assembly and its subsidiary bodies in New York. This structure leads to a diffusion of responsibility and to cumbersome procedures. The new Constitution would make the organization more responsive to its member governments.

Second, the major contributors—Western Europe, the United States, Canada, Japan, Australia, and the Soviet bloc—would have blocking power on program and budget decisions. All these countries together currently can be outvoted in the U.N. General Assembly.

Third, the United States would have a specific right of withdrawal from UNIDO, giving us flexibility, should it ever become necessary, to stop contributing to this organization without withdrawing from the U.N. I might point out that by simply having this right, without exercising it, the United States would have greater leverage over the programs of the organization.

In sum, with ratification of this Constitution, we have an opportunity to improve the effectiveness of a major organ of the U.N. system and our role in it. We have an opportunity to continue to work through the U.N. system to support industrial development in the developing countries and advance the cause of security and peace in the world community. And finally, we have an opportunity to increase our ability to demonstrate dynamism of the American political and economic systems, and their applicability as models for developing countries.

Mr. Chairman, I would also ask the President's letter of transmittal be added for the record.

Thank you, Mr. Chairman.

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